

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1558 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DIPABHAI PUNJABHAI PARMAR

Versus

STATE OF GUJARAT  
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Appearance:

MR BIPIN I MEHTA for Petitioner  
MR IM PANDYA AGP for Respondents  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/11/2000

ORAL JUDGEMENT

#. Heard Mr.Bipin Mehta, learned advocate for the  
petitioner and Mr.I.M.Pandya, learned AGP on behalf of  
the respondents.

#. Rule. Mr.I.M.Pandya, learned AGP waives service of  
rule on behalf of the respondents. With the consent of

both learned advocates for the parties, this matter is taken up for final hearing today.

#. The brief facts of the present petition are that the father of the petitioner who was serving as Revenue Kotwal in Vadodara District Revenue Office and had expired on 3-5-1988, while he was on service. Therefore, the petitioner has requested to the respondents for appointment on compassionate ground. In response to the application given by the petitioner, the request was accepted by the respondent authority by letter dated 20th March, 1991, wherein the order passed by the Section Officer, Revenue Department in pursuance of the letter dated 25th April, 1990, directed the Collector, Vadodara and accordingly granted permission with direction to appoint the petitioner in the post of Class-IV cadre relaxing educational and other qualification and in the said letter, it was also directed by the higher authority to the Collector, Vadodara to appoint the petitioner in Class-IV post giving all the relaxation in respect to recruitment procedure. The said direction has been issued by the State Government, Revenue Department to the District Collector, Vadodara and in pursuance to that direction, the petitioner was appointed as part-time Water Bearer from March, 1991 on fixed salary of Rs.450/-. Accordingly, the petitioner is working as part time employee since March, 1991 with the respondents. The petitioner has also raised contention that during this period, on various occasion, work of peon has also been taken from the petitioner by the respondents. But according to the grievance of the petitioner, even regular salary of the petitioner as part time employee has also not been paid to the petitioner.

#. The contention raised by the respondent that the petitioner was appointed on the post for which, educational qualification is not required. Even according to the standing instructions of the State Authority, the petitioner cannot be given appointment to the higher post. However, it seems that subsequently the petitioner had made application claiming that he has passed 4th Standard examination and he should be appointed as Class-IV employee. This application was given on 25th June, 1998 and the said application was rejected because of the aforesaid reasons and the reply was sent to the petitioner vide letter dated 28th September, 1998. Further contention raised by the respondent is that the petitioner was appointed as Part-time water bearer and for this service initially he was paid Rs.450/- per month and now he is getting Rs.1350/- per month. Although the respondents have

denied the averments in respect that he worked as peon. However, it was admitted by the respondent that because of the elections, the services of the petitioner was utilized and he was paid his extra allowance and pay for the days his services were utilized. The petitioner has also raised specific contention that the petitioner is not having the requisite qualification for appointment to the post of Class-IV employee and therefore he was given the post of part time water bearer and accordingly, it is also admitted that the petitioner has been working as the part time water bearer. The respondent has also contended that since the petitioner was not holding requisite educational qualification, the post was temporarily created to help the petitioner and his family. It is also submitted that the petitioner was being paid according to the revised pay scale for the part time employee and accordingly, the petitioner was not appointed on the post of peon and therefore, question of claiming difference in salary etc. does not arise.

#. I have heard the learned advocates for the parties and considering the submissions and on perusal of record of the case, one thing is very clear that though the sanction was given by the State Government by letter dated 20th March, 1991, wherein, the Government has not at all directed the respondent No.2 - The District Collector, Vadodara to appoint the petitioner as part-time employee but on the contrary, a clear direction was given to the effect that after giving all relaxation in respect to all service rules and recruitment rules to the post of Class IV post and accordingly, the petitioners ought to have been appointed in Class-IV post and even educational qualification is was directed to be relaxed and therefore the same was not required to be taken into consideration. But considering the action taken by the respondents, this direction of the State Government has not been strictly complied by the District Collector, Vadodara. When the Government has sanctioned the post and directed to the District Collector, Vadodara to appoint the petitioner in Class-IV post by even directing relaxation of educational qualification and employment exchange procedure. Considering the order dated 20th March, 1991, the District Collector has not strictly complied with the order of the Government. Even in affidavit-in-reply filed on behalf of the respondent No.2 - The District Collector, Vadodara, there is no averments to the effect that why the order dated 20th March, 1991 has not been strictly complied by the respondent. This Court is of the opinion that there was no need for the District Collector, Vadodara to give appointment to the petitioner as part time employee in

the post of water bearer when even the State Government has sanctioned and directed the District Collector to appoint the petitioner in Class-IV post. However, it is pertinent to note that the petitioner has now passed 4th Standard and though this fact has been communicated to the respondents by application dated 25th June, 1998 and in view of this fact, the contention and stand of the respondent that the petitioner is not possessing requisite educational qualification does not stand now but surprisingly, the said application of the petitioner was rejected by the petitioner. Therefore, considering the facts and circumstances of the case, it is directed to the District Collector, Vadodara to comply the order passed by the State Government, Revenue Department dated 20th March, 1991 and accordingly the petitioner shall be appointed on the post of Class-IV full time regular employee within one month from the date of receiving the certified copy of this order by the respondent No.2. It is also further directed to the respondent No.2 that the District Collector, Vadodara shall also pay salary to the petitioner for the part time work if not paid for any such period, within two months for the date of receiving the order of this Court. In the result, the petition is allowed accordingly. Rule is made absolute to the aforesaid extent.

Date : 23-11-2000 [ H.K.Rathod, J.]

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